IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.22465 of 1999

Dated: 14-08-2007

Between:

M/s Ramdayal Pannalal and sons,
Dealers, Bharat Petroleum Corporation Limited,
Bhongir, Nalgonda District,
Represented by its Managing Partner Y.Srinivasa Rao.

... Petitioner

and

Bharat Petroleum Corporation Limited,
4 & 6 Currimbhoy Road, Ballard Estate,
Mumbai – 400 001 and another.

... Respondents

ORDER:

Petitioner, which is a dealer in Bharat Petroleum Corporation, approached this Court and filed the present writ petition questioning the order dated 26-10-1999 passed by second respondent, by which petitioner was restrained from making any sales and supplies for a period of 45 days by way of penal action.

2. Facts, in brief, are: Petitioner is the licencee of first respondent Corporation, by virtue of an agreement dated 18-04-1994, under which petitioner is obliged to supply the quality products as supplied to it by respondents and shall maintain the standard as is required by law. While so, on 27-08-1999, the officers of second respondent inspected the petrol pump of petitioner in the presence of one Venkateswarlu, who is an employee of petitioner to ascertain the quantity and quality of the product sold by petitioner, and the test carried out by respondents at the retail outlet was strictly in conformity with the specification of the motor spirit prescribed under Schedule-I of the Control Order, 1990 as amended upto date and also as per the product specification as indicated in invoice dated 23-08-1999. However, the officials of respondents, for the reasons best known to them, drawn the sample for lab analysis on 05-10-1999. Thereafter, by a letter dated

30-09-1999, second respondent informed to petitioner that as per the test results, the product as represented by the sample failed to meet the requirements of M.S. specification and as such it was called upon to submit his explanation. Pursuant to which, petitioner submitted an explanation dated 09-10-1999 stating that the test carried out by the officer at the retail outlet was in conformity with Schedule–I of the Control Order 1990 and the retail outlet dealer is only expected to follow density tests as prescribed under Control Order and the dealer is no way concerned with the other technical parameters of the product and therefore, it cannot be held liable once the tests prescribed under Schedule-I are tallied. Not being satisfied with the said explanation, and without giving any opportunity to petitioner, second respondent passed the impugned order dated 26-10-1999, suspending the sales and supplies to petitioner for a period of 45 days. Hence, this writ petition.

3. According to learned counsel for petitioner, the sample was drawn

on 27-08-1999, and the same shall be sent to the Notified Laboratory for analysis but in the instant case the same was not done within a period of ten days as provided for under the Circulars issued by the Ministry of Petroleum and Natural Gas, New Delhi, dated 12-09-1994. The other contention of learned counsel for petitioner is that the sample was not tallying with the sample that was retained as per the Marketing Discipline Guidelines.

4. Though notices are served on respondents, they have not challenged the said contentions of learned counsel for petitioner by filing any counter affidavit. Hence, this Court is of the view that the said contentions are to be accepted.

5. Accordingly, the writ petition is allowed and the order dated 26-10-1999 passed by second respondent restraining the petitioner from making any sales etc., is set aside. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.14-08-2007
GLV